REQUEST FOR RECONSIDERATION

This Application has been reviewed in light of the Office Action dated November 7, 2005 ("*Office Action*"). Claims 1-47 are pending in the Application and stand rejected. Claims 1-9, 12-14, 27-34, 37-38, 40, and 42-47 have been amended solely to add clarifying language. Applicants respectfully request reconsideration and allowance of all pending claims in view of the foregoing amendments and the following remarks.

REMARKS

Rejections Under 35 U.S.C. § 112

Claim 1 stands rejected under 35 U.S.C. § 112, ¶ 2 as allegedly failing to particularly point out and distinctly claim the subject matter regarded as the invention. Applicant respectfully traverses. It is stated that:

> Claim 1 recites the limitation "after-market trading" and "in at least one activity". These limitations are not found in the other limitations of claim 1. There is insufficient antecedent basis for these limitations in the claim.

Office Action, at 2. Applicant respectfully submits that whether a limitation is found within other limitations of a claim is not the test for whether proper antecedent basis exists. Some limitations must be first (i.e., originally) introduced and not based on a prior limitation. For example, "after-market trading" is first introduced in the appropriate instance. If it was referring to an earlier limitation without proper antecedent basis, it might have be phrased (for example) as "***the*** after-market trading," which would have implied a reference to an earlier-recited "after-market trading." Similarly, if "in ***the*** at least one activity" might have raised an antecedent basis issue. However, as recited, "in the at least one activity" simply introduces the limitation properly for the first time.

Nevertheless, Applicant has amended Claim 1 in an attempt to clarify this point and in a manner believed to comply with the antecedent basis requirements. Therefore, Applicant respectfully requests withdrawal of the rejections based on 35 U.S.C. § 112, ¶ 2.

Objections to the Specification

The specification stands objected to for various informalities. Applicant has endeavored to amend the Specification in order to address the issues raised in the Office

Action. Applicant further attaches a substitute Specification as requested. Therefore, Applicant respectfully requests withdrawal of the objections to the Specification.

Rejections Under 35 U.S.C. § 102

Claims 1-3 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,067,532 to Gebb ("*Gebb*"). Applicant respectfully traverses.

Gebb describes a system for buying and selling tickets to events. Such tickets represent a right to admission to the respective event. *Gebb* does not discuss "entries" and certainly does not consider "entries" in the manner which this term is used in Applicant's claims. As noted in the instant Specification (for example, at p. 5, ll. 14-17), "[e]ntries may include teams, individuals, events, or any other designation for which one or more winning entries may be determined based on the outcome of the activity or the occurrence of an event associated with an activity." Thus, even if the term "entry" was used in the *Gebb* disclosure, it would mean "ticket" or "admission to an event." By contrast, an "entry" in connection with Applicant's claims means a chance that an event associated with an activity will occur.

Applicant has amended Claim 1 to recite "each entry representing a chance that an event associated with the activity will occur;..." Applicant respectfully submits that at least this limitation is neither disclosed nor suggested by the cited art, particularly in combination with the other limitations and elements recited in Claim 1 and its dependent claims. For at least this reason, Applicant respectfully requests withdrawal of the rejection based on 35 U.S.C. § 102(e).

Rejections Under 35 U.S.C. § 103

Claims 4-47 stand rejected under 35 U.S.C. § 103(a) as allegedly being anticipated by *Gebb* in view of U.S. Patent Publication 2002/0082969 A1 to O'Keeffe, et al. ("*O'Keeffe*"). Applicant respectfully traverses.

In order to establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). Applicant respectfully submits that each and every element of Claim 1 is not found within the cited references. Claim 1 has been amended as noted above. Applicant respectfully submits that at least the referenced limitation (i.e., "each entry representing a chance that an event associated with the activity will occur;...") is neither disclosed nor suggested by the cited art. Claims 4-47 each, ultimately, depend from Claim 1. Therefore,

Applicant respectfully submits that even if *Gebb* and *O'Keeffe* were properly combined (a point not admitted), then the combined references would still fail to disclose each and every element and limitation of the rejected claims.

Moreoever, Applicant respectfully submits that no proper motivation to combine these references has been provided. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one or ordinary skill in the art." MPEP § 2143.01. It is stated in the Office Action that "It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the distributing comprise conducting a lottery for the first set of entries and to modify in *Gebb* because such a modification would allow *Gebb* to participate in a lottery distribution where prospective participants may be asked to register over a web site by telephone and to pay the ticket lottery subscription fee in advance." Office Action, at 5. A similar statement is made regarding using an auction for distributing entries. Applicant respectfully submits that such statements do nothing more than present a possible result of combining the references, without providing any motivation or suggestion to combine the references in the first instance. This constitutes hindsight reasoning of the type repeatedly rejected by the PTO Board and the Court of Appeals for the Federal Circuit. This reasoning applies equally to other claims including, without limitation, Claims 14, 15, 16, 34, 35, 37, and 40.

Moreover, even if the references could be properly combined. Applicant respectfully submits that certain elements and limitations of various dependent claims are neither disclosed nor suggested by the cited art. In connection with Claim 6, for example, *Gebb*, col. 6, ll. 40-63 is relied upon for the step of distributing a second set of entries for the first activity. Office Action, at 6. The referenced section in *Gebb*, however, is discussing the "after-market" or "post-distribution" exchange of event tickets. This is not the same as the recited initial distribution of entries, which is distinct from the trading of such entries.

In connection with Claim 7, for example, *Gebb*, col. 6, . 64-col. 7, l. 13 is relied upon for the after-market trading of the first set of entries being discrete from the after-market trading of the second set of entries. Office Action, at 6. First, the referenced section simply does not discuss trading of two sets of entries. Second, the referenced section concerns the

provision of paperless event tickets, and not the distribution and trading of two discrete sets of entries.

In connection with Claim 9, for example, *Gebb*, col. 8, ll. 12-43 is relied upon for the step of distributing a second set of entries for a second activity. However, the referenced section only discusses the exchange of tickets that have already been distributed, and not a second trading of a second distribution of entries.

In connection with Claim 21, for example, *Gebb*, col. 3, ll. 20-42 is relied upon for the disclosure of the activity being a tournament. The reference section discusses sporting events. However, in the entire *Gebb* disclosure, the term sporting event is used in the context of a single game -- not a multi-game tournament. Thus, *Gebb* discusses buying and selling tickets to a sporting event (i.e., a single game).

In connection with Claim 23, for example, *Gebb*, col. 3, ll. 34-42 is relied upon for the activity being a basketball tournament. As discussed above in connection with Claim 21, for instance, Applicant submits that *Gebb* simply does not make this disclosure.

In connection with Claim 24, for example, there is a reference to POSITA. Applicant requests clarification of this reference. Even if the references discloses what is proposed in the Office Action, there is no motivation to combine the cited references. Rather, there is merely a statement as to what would result from the combination.

In connection with Claim 28, for example, *Gebb*, col. 8, ll. 3-11 is relied upon for the single bundle being distributed prior to conducting the after-market trading of the first set of entries. However, the referenced section concerns after-market ticket exchanges and not a pre-exchange distribution.

In connection with Claim 30, for example, *Gebb*, col. 7, l. 53-col. 8, l. 29 is relied upon for receiving a short sell order. However, the referenced section merely deals with an anti-scalping mechanism and not a "short sell" as that term is used in the trading (and as defined in Applicant's specification). The same reasoning applies to Claim 33.

In connection with Claim 35, contrary to the assertions in the Office Action, the cited references do not disclose "payouts." This makes sense, because the referenced sections of *O-Keeffe* are merely discussing a lottery distribution of event tickets. There is no discussion of entries, for which a winning entry may be determined (as previously discussed) and which would thus result in a payout to the winner.

In connection with Claim 37, the cited references merely discuss ticket revenue -- not any payout associated with a winning "entry." Similar reasoning applies to Claims 38, 39, and 40.

For at least the foregoing reasons, Applicant respectfully requests withdrawal of the rejections of Claims 4-47 based on 35 U.S.C. § 103.

CONCLUSION

Applicants respectfully submit that the present Application is in condition for allowance and favorable notice thereof is solicited. Applicants request allowance of Claims 1-47. No fees are believed to be due; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

If there are matters that can be discussed by telephone to further the prosecution of this application, Applicants respectfully request that the Examiner call their attorney at the number listed below.

Respectfully submitted,

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